

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
SAI MALENA JIMENEZ-FOGARTY

Plaintiff,

-v.-

THOMAS FOGARTY et al.,

Defendants.
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ORDER

24 Civ. 8705 (JLR) (GWG)

GABRIEL W. GORENSTEIN, United States Magistrate Judge:

This case has been referred to the undersigned for all pretrial purposes. As an initial matter, plaintiff has not re-filed her complaint in compliance with the requirements of the December 6, 2024, Order (Docket # 10) by the December 16, 2024, deadline. See Order, dated December 12, 2024 (Docket # 18). It appears, however, that plaintiff intends to file an amended complaint. See Docket # 28. In light of plaintiff's intention, the Court will take no action on the failure to meet the December 16, 2024, deadline and the original complaint (Docket # 1) will remain sealed to the public.

Plaintiff's request (Docket # 28) for an extension of the deadline to file an amended complaint is granted. The amended complaint shall be filed by January 9, 2025. Of course, plaintiff must ensure that any information or material covered by Docket # 10 is either redacted or omitted from the amended complaint.

Plaintiff's stated intention to file the amended complaint effectively renders moot the request for an extension contained in Docket #27. The deadline for any party to respond to the original complaint is adjourned sine die.

On a separate matter, the docket sheet indicates that there has been no proof of service as to four defendants as required by Fed. R. Civ. P. 4(l)(1): Nicole Digiaco, Judge Sherri Eisenpress, Judge Thomas Zugibe, and Laura Marino.¹ Under Fed. R. Civ. P. 4(m), defendants must be served within 90 days of the filing of a complaint — here, February 13, 2025 — absent good cause for failure to timely serve. Plaintiff shall file proof of service compliant with Fed. R. Civ. P. 4(l)(1) as to each defendant served.

¹ While no proof of service has been filed as to the remaining three defendants, this deficiency is of no importance considering counsel for one defendant has conceded service (Docket # 27) and the other two defendants filed a motion to dismiss (Docket # 11).

Because of the large number of defendants in this matter, the Court has decided that the case will proceed most efficiently if responses to the amended complaint are due at the same time. In particular, it is important that any motions to dismiss filed by the defendants proceed on the same briefing schedule and, if defendants can agree to do so, that joint briefs are filed. To this end, plaintiff is directed to file a letter within 7 days of effectuating service as to all defendants informing the Court of having done so. Because defendants must be served by February 13, 2025, the Court expects that such letter will be filed no later than February 20, 2025. If all defendants have not been served by February 13, 2025, plaintiff shall file a letter seeking an extension of the deadline and showing good cause for such an extension.

As set forth in paragraph 2.A of the Court's Individual Practices, the Court has a pre-motion conference requirement. The deadline for all defendants either to file an answer to the amended complaint or to file a letter requesting permission to make a motion to dismiss the amended complaint is hereby extended to the later of: (a) 21 days after the filing of plaintiff's letter indicating that all defendants have been served, (b) January 30, 2025, which is 21 days after the planned filing of the amended complaint, or (c) the last day on which any defendant was required to respond to the complaint by operation of Fed. R. Civ. P. 4(d)(3), if applicable. In other words, the deadline for all defendants to respond to the complaint shall be the same and in accordance with this paragraph. Any letter requesting permission to file a motion to dismiss shall include the defendant's (or any coordinating defendants') proposal for the briefing schedule.

Plaintiff is reminded that any response to a letter requesting permission to make a motion to dismiss must be filed within two business days of the filing of that letter per paragraph 2.A of the Court's Individual Practices.

In light of the planned filing of the amended complaint, the motion to dismiss filed by Lisa Zeiderman and Ashley Kersting (Docket # 11) is deemed withdrawn without prejudice. Thus, plaintiff should not respond to this motion.

Finally, the parties need take no action with respect to the holding of a conference as set forth in the Order filed December 19, 2024 (Docket # 26). The Court will file an Order on the public docket in the event it schedules a conference.

SO ORDERED.

Dated: December 20, 2024
New York, New York


GABRIEL W. GORENSTEIN
United States Magistrate Judge